

Dallas D. Erickson Testimony
HB 419 —Restore Fault to Dissolution of marriage

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HB HB 419

House Judiciary Committee
Rep. Tom McGillvray, Sponsor
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Mr. Chair and Members of the Committee,

I am Dallas Erickson and I represent Montana Citizens for Decency through Law.

By Stephen Baskerville

Almost four decades after the "no-fault" divorce revolution began in California, misconceptions abound. Even the many books about divorce, including myriad self-help manuals, are full of inaccurate and misleading information. No public debate preceded the introduction of no-fault divorce laws in the 1970s, and no debate has taken place since.

Yet divorce-on-demand is exacting a devastating toll on our children, our social order, our economy, and even our constitutional rights. A recent study estimates the financial cost of divorce to taxpayers at \$112 billion annually. Recent demands to legitimize same-sex marriage almost certainly follow from the divorce revolution, since gay activists readily acknowledge that they only desire to marry under the loosened terms that have resulted from the new divorce laws. Divorce also contributes to a dangerous increase in the power of the state over private life.

Here are some of the most common clichés and misconceptions about modern divorce, along with the facts.

Myth 1: No-fault divorce permitted divorce by mutual consent, thus making divorce less acrimonious.

Fact: No-fault divorce is unilateral divorce. It permits divorce by one spouse acting alone for any reason or no reason. No "grounds" are required, and the involuntarily divorced spouse need commit no legal infraction, either criminal or civil. It is therefore forced divorce, meaning you can be divorced over your objections. (Some 80 percent of divorces today are unilateral.)

Even more serious, you can be forcibly separated from your children, your home, and your property, also through literally "no fault" of your own. Failure to cooperate with the divorce opens the innocent spouse to criminal penalties. No-fault divorce made divorce far more destructive by allowing the state to undertake court proceedings against innocent people, confiscate everything they have, and incarcerate them without trial.

Myth 2: We cannot force people to remain married and should not try.

Fact: It is not a matter of forcing anyone to remain married. The issue is taking responsibility for one's actions in abrogating an agreement. With no-fault divorce, the spouse who divorces without grounds or otherwise breaks the marriage agreement (for example, by adultery or desertion) thereby incurs no onus of responsibility. Indeed, that spouse gains advantages.

Courts therefore do not dispense justice against a legal wrong. Instead, every divorce is granted automatically, and the courts simply divvy up the goods -- including the children -- according to any criteria they choose, including separating the innocent spouse from his or her children without having to give any reason. Because the divorce creates work and earnings for judges, lawyers, and other court personnel, there is a strong incentive for these officials to reward the guilty spouse in order to encourage more divorces and more business for the courts. As Charles Dickens pointed out, "The one great principle of the...law is to make business for itself."

Myth 3: No-fault divorce has led men to abandon their wives and children.

Fact: This does happen (wives more often than children), but it is greatly exaggerated. The vast majority of

no-fault divorces -- especially those involving children -- are filed by wives. In fact, as Judy Parejko, author of *Stolen Vows*, has shown, the no-fault revolution was engineered largely by feminist lawyers, with the cooperation of the bar associations, as part of the sexual revolution. Overwhelmingly, it has served to separate large numbers of children from their fathers. Sometimes the genders are reversed, so that fathers take children from mothers. But either way, the main effect of no-fault is to make children weapons and pawns to gain power through the courts, not the "abandonment" of them by either parent.

Myth 4: When couples cannot agree or cooperate about matters like how the children should be raised, a judge must decide according to "the best interest of the child."

Fact: It is not the business of government officials to supervise the raising of other people's children. The entire point of a marriage and family is for mothers and fathers to cooperate and compromise for the sake of children and provide an example to those children of precisely these principles, without which no family can operate. Allowing one parent to surrender both parents' decision-making rights over the children to government officials because of "disagreement" -- without any infraction by the other (who may "disagree" only about losing his or her children) -- negates the very principle of private family life and invites collusion between the divorcing parent and state officials.

Judges and civil servants are not disinterested. When we give government officials the power to make decisions about the best interest of other people's children, it may well become the best interest of the officials. Allowing them to control the private lives of citizens' who have committed no legal infraction simply by invoking "disagreement" gives them an incentive to reward the parent that is being the most disagreeable. That is precisely the reason for the runaway divorce epidemic.

Myth 5: Divorce must be made easy because of domestic violence.

Fact: Actual physical violence is legitimate grounds for divorce and always has been. So it does not justify dispensing with all standards of justice, which is what no-fault entails. On the contrary, openly false accusations of domestic violence and child abuse have become an industry in themselves, mostly to secure child custody. By dispensing with standards of justice for divorce, we have allowed them to be abandoned for criminal justice too. Thus "domestic violence" and "child abuse" are not adjudicated as criminal assault, and the accused seldom receives a trial or chance to clear his name. Instead he simply loses his children until he can prove his innocence, an impossible standard.

Most domestic violence and child abuse take place during and after family dissolution; very little occurs in intact families. So domestic violence is a red herring. Federal funds for domestic violence and child abuse now serve effectively as a subsidy on divorce in every state in America, encouraging spouses to bring false accusations and law-enforcement officials to reward them. This shatters another myth: that family law is the province of states.

No-fault divorce has exacerbated the divorce epidemic on almost every count. We urgently need an extensive public debate on divorce and the connected issues of child custody, domestic violence, child abuse, and child support -- precisely the debate that the divorce industry has suppressed for four decades.

(Stephen Baskerville is associate professor of government at Patrick Henry College and author of *Taken Into Custody: The War Against Fathers, Marriage, and the Family* (Cumberland House, 2007).
<http://www.catholicnewsagency.com/resource.php?n=513>)

Thank you.

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